THE NEGOTIABLE INSTRUMENTS LAW—A REJOINDER TO DEAN AMES.

THE best test of a good shield," says the proverb, "is a sharp lance." No keener weapon than that wielded by the accomplished Dean of the Harvard Law School could be turned against the Negotiable Instruments Law. The fact that in his two elaborate attacks on that code he has failed to disclose a single serious flaw is the most conclusive proof of its invulnerability. A word of recapitulation and introduction may be allowed before making a direct reply to his "One Word More" in the February number of the HARVARD LAW REVIEW.

Of the twenty-three sub-sections of the law to which the critic objects, eleven are taken from the English Bills of Exchange Act,[1] one follows the German code,[2] one is taken from a New York statute,[3] three are mere matters of form,[4] and the objections to the remaining seven chiefly come, it would seem, from misinterpretations of the meaning of the law on the part of the critic.

The eleven sub-sections taken, most of them word for word, from the English Bills of Exchange Act, and all so identical therewith that the critic's objections apply to the acts equally, need no justification at this late date. They have been the satisfactory law of England and her colonies for twenty years. On them criticism is barred by the natural statute of limitations and the universal approval of the commercial world. One might as well criticise the Bill of Rights or the Lord Chancellor's wig. No text-book that I know of holds any doctrine contrary to the law of these eleven sections. Nor in fact has the Dean suggested any text-book which is in favor of any one of his twenty-three strictures. As to the practical working for twenty years of these eleven sub-sections, I beg to refer to the testimony of one of the committee who helped to draft the English Act.

In December last I wrote Mr. Arthur Cohen, Q. C., who was one of the committee who framed the English Act, stating the

[1] 3–2 from 3–3 of English Act; 9–3 from 7–3, with an addition not in question; 9–5 from 8–3; 22 from 22–2; 29 from 28; 37–2 from 35–2; 49 from 31 4; 70 from 52; 175 from 65–5; 186 from 74, and 66 from 52–2.

[2] Sec. 20, art. 95, German Exchange Law.

[3] Sec. 137.

[4] 36–2, 36–3, 37.

sections of the English Act which Dean Ames had criticised in his first article, and asked him if those sections had caused any difficulty in English practice. Unfortunately the copy of the American Act which I sent to him did not reach him, and he could only answer partially the points suggested. I wrote again, sending the two articles of the Dean, the answer, and the American Act, expecting to be able to publish his reply in this article. As it has failed to reach me at this writing,[1] I can only give the substance of the letter received from him dated January 30, 1901. It was evidently not intended for publication as a whole, but I am permitted to make the following quotations: —

"No difficulties have arisen in England with reference to the suggested points, nor any litigation except as to the meaning of 'fictitious person.' The question came before the House of Lords in Vagliano *v.* Bank of England, 1891, Appeal Cases, 107.

"I think you are to be congratulated if your Act has not been and cannot be objected to for more formidable reasons."

In a letter received several years ago Mr. Cohen had written as follows: —

"In my opinion the language of your bill is singularly felicitous. It is more clear, concise, less stiff and artificial than our Bills of Exchange Act, and in this respect — one by no means unimportant — your draft is an improvement on our Act."

Perhaps it ought to be added here that Judge Chalmers, the draftsman of the English Act, to whom a draft of the Negotiable Instruments Act was sent in 1896, after congratulating Mr. Crawford on the success of his work, recommended Mr. Cohen as one of the three best authorities in England on the law of bills and notes, the other two, I believe, being eminent London bankers, who had participated in the drafting of the English Act.

One word as to those eight sections which the Dean does not think it necessary to re-argue. As my answer to the criticisms on those eight sections, founded chiefly on their utility and convenience, does not seem convincing to the critic, I pause, deprecatingly, to suggest that the same eight sections are also well sustained by authority, as well as by reasons of convenience.

Let us see. Section 20, it is claimed, makes by implication an unauthorized agent liable personally on the note. In addition to the answer already given in the Yale Law Journal for January, 1901, *i. e.* "that the agent alone is in law, as in fact, the real

[1] For letter received after sending to press, see Appendix, p. 36.

maker of the note" in such cases, and might well be made directly liable, as he always is ultimately, it is proper to refer to the fact that the rule which the Dean claims is laid down in the Negotiable Instruments Law is adopted in the German Code, to which the Dean refers us as a model,[1] and is declared in Byars *v.* Doores,[2] as having "the weight of authority" decidedly in its favor at that time. Tiedeman (sec. 84) cites eleven cases so holding, to which we may add 147 Ill. 520; 104 Ind. 32. There are more cases one way and more states the other.

The Dean's criticism on sections 23–2–3 was that the word "trustee" was more descriptive of the position of the indorsee in restrictive indorsement than the word "agent," and so but one word should be used. It is proper to say that the text-writers take exactly the opposite view,[3] and so did Dean Ames when he published his Leading Cases. In his Index and Summary, p. 837, is the following section: —

"The term 'restrictive indorsement' is commonly but loosely applied to *two distinct kinds of orders*,[4] namely, to an order, whereby the holder indorses a bill to one person in trust for another, *e. g.* 'Pay A for account of B;' 'Pay A for the use of B;' and to an order whereby the holder simply deputes to an agent the business of collecting a bill, *e. g.* 'Pay to A for my use.'" It was with reference to this "common," *i. e.* ordinary use of the word that the section in question was framed.

Mr. Tiffany, in the new Norton Hornbook on Bills and Notes, as usual hits the exact distinction tersely and clearly (p. 124): —

"The first and commonest variety, and the one which is generally spoken of by the text-writers as the restrictive indorsement, is that where the holder deputes to some other person the business of collecting the bill; the other where the holder indorses the instrument to one person for the use or benefit of, or as the trustee of another."

Regarding section 49, which treats of the right to have the transferrer indorse, which follows the English Act and does not follow the Colorado Act, as the critic would have it do, it may be pertinent to say that the annotator of the Colorado Act, Mr. J. Warner Mills, (p. 23), says, speaking of the two forms of expression, "but either form of expression establishes the equitable rule of law."[5]

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[1] American Law Register, March, 1900, vol. 39, p. 145. [2] 20 Mo. 284.

[3] See especially Chalmers, 5th ed.; McLaren on Canadian Bills of Exchange Act, 214; Tiffany's Norton, 124.

[4] The italics are ours.

[5] See, also, Huffcutt, 26, to the same effect.

Section 66 is substantially in the line of section 55 of the English Act, as already suggested.

Section 68, making joint indorsers liable severally, which the critic called "a blunder," and now calls "unprecedented" and "arbitrary," is in accord with the theory of the law already established in most of the states which adopt the reformed procedure, say three quarters of the states of the Union.[1] "The liability of each indorser is several. So now by statute generally."[2]

Section 137, making destruction of a bill acceptance, at first was objected to as "a perversion of language," "fantastic and inexplicable."[3] It is now described as "crystallizing an unscientific conception." Whether it is fantastic, or crystalline, or scientific, is not, perhaps, so very material. But instead of its being "a conception" of the draftsman or of the conference, the section was taken from the statutes of eight states, including the state of New York, from all of which the report was that "it had worked well." The bankers regarded it as a simple, practical, definite working rule, and none of the twelve commentators on the Negotiable Instruments Act have suggested the least objection to it.

Section 175. Payment for Honor. The Dean argued in the December number of the REVIEW that because Mr. Chalmers adopted in the English Bills of Exchange Act the doctrine of an overruled case,[4] the fact of its having been overruled must have been overlooked. By reference to note 3, page 237, of the fifth edition of Chalmers, he will see that the overruling case[5] is duly cited as well as the continental codes. There was no "slip of memory" there. Daniel favors the overruled case.[6]

DIRECT ANSWER TO "ONE WORD MORE" IN THE FEBRUARY NUMBER.

Section 3–2. This section asserts the familiar doctrine that an order or promise is not rendered conditional by "a statement of the transaction which gives rise to the instrument."[7] The Dean's first article declared this clause "unmeaning, deplorable, nullifying

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[1] Connecticut Rules of Practice, p. 1, sec. 2; 2 Bliss, 53; Pomeroy, 2d ed., 326.

[2] Norton, 159.

[3] See our answer to these adjectives and others, 10 Yale Law Journal, 88, January, 1901.

[4] *Ex parte* Lambert, decided by Lord Erskine.

[5] *Ex parte* Swan.

[6] Daniel, sec. 1255; Norton, 301.

[7] English Act, 3–3; 4th Am. & Eng. Enc. of Law, 89, citing 43 cases.

several decisions," and either "mischievous" or "obscure, inartistic, and useless." He cited, to show the inefficiency of the Negotiable Instruments Act on this point, the case of Third Bank *v.* Spring,[1] an Erie County Supreme Court case, in which he said "the judge ruled that the Negotiable Instruments Law had no application to such a note." In the answer it was stated that that case was reversed in the Appellate Division.[2] The Dean now replies that the reversal did not affect the point he made that the Negotiable Instruments Act was not applicable. On reëxamination it turns out that the note in question in that case was made in 1896 and negotiated in May, 1897. Whereas the New York Negotiable Instruments Law did not go into effect until October, 1897, and therefore, as the judge said, had no application to it. The law had not then become operative in the state of New York. So much for the wee Supreme Court case of Erie County, which was supposed to demonstrate the inefficiency of the Negotiable Instruments Law as expressed in section 3–2. As this is the only case decided on the Negotiable Instruments Law cited by the Dean, and that did not come under the law at all, the natural inference is that the Dean labors under some difficulty in treating the subject under the "case law system." He is likely to continue to so labor, for the Negotiable Instruments Law, not only in England, but in this country, diminishes litigation and the necessity for it to an astonishing degree.

Next page, in note 3, the Dean speaks of "Judge Brewster's startling suggestion that a note payable to the order of unincorporated associations or the estates of deceased persons is payable to bearer by force of this section 9–3." But in point of fact, by referring to the answer published in the Yale Law Journal, on the criticism on section 9–3, it will be seen that, instead of being put down as a statement of the writer in the Law Journal, it is put down as follows: —

> "His [the Dean's] criticism seems to imply that the act should cover rare and imaginary exceptions rather than serve the commendable purpose which he concedes that the section has, of providing for common cases, such as notes payable to unincorporated associations, estates of deceased persons, and the like."

If the concession is denied, that is a question of fact. If it is admitted, is it quite right to exploit one's own admission as the opinion of his opponent? As to the section criticised, it is not

[1] 28 N. Y. Misc. 9.

[2] 50 App. Div. 66.

only more conservative than the English act, but it is so laid down in the text-books.[1] As to the doctrine of the illustration itself, to wit, that the estate of one deceased is regarded as a fictitious payee, the only point about that was that it was convenient in such cases to use a fictitious name.

"How far afield a figure sometimes leads."

Is section 40 inconsistent with sub-section 9–5?

Sub-section 9–5 reads as follows: —

"The instrument is payable to bearer when the only or last indorsement is an indorsement in blank."

Section 34 is: —

"A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer and may be negotiated by delivery."

Section 40 is: —

"Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement."

How, giving the language of section 34 its legitimate effect, there is any repugnancy between sub-section 9–5 and section 40, I have never been able to perceive. Without rediscussing whether the critic was justified in changing the language of section 40, in the first article, or whether the substantive "negotiation" in section 34 applies to the verb "negotiated" in section 40, I much prefer to refer the reader to the full and clear exposition of the whole matter in the new Norton Hornbook, pages 110 to 118. Mr. Tiffany's paraphrase of section 40 on page 116 assumes that the words "indorsed in blank" are equivalent to the words "payable to bearer," and is as follows: —

"An instrument which is originally payable to bearer, or which has been indorsed in blank, though afterwards specially indorsed, is still payable to bearer; except as to the special indorser, who on such an instrument, after such an indorsement, is only liable on his indorsement to such parties as make title through it."

But what is the result of this interpretation? In the new Norton Hornbook, not only do 9–5 and 40 stand as good law, but after

[1] Daniel, 119; Randolph, 169; Tiedeman, sec. 243.

going over all the cases on pages 116–17–18, and after stating that the application of the rules "is somewhat confusing to the student," Mr. Tiffany sums up as follows: —

"The rule is well settled that if a note or bill be once indorsed in blank and afterwards indorsed in full, it will still, as against the drawer, payee, and prior indorsers, be payable to bearer, though, as against the special indorser himself, title must be made through his indorsee."

In other words, Mr. Tiffany finds no inconsistency at all. Subsection 9–5 and section 40 stand in perfect harmony. In fact, one is the complement of the other.

As to section 22, the Dean's claim is that some members of the committee informed him that they interpreted the section differently from the interpretation given in the Yale Law Journal. I can only say that I never heard of any other interpretation, nor was any such intimated when the committee reported to the conference that they found none of the Dean's criticisms tenable.[1]

Section 29. Accommodation Paper. One hardly knows what language to use in characterizing the serene self-confidence with which the Dean reiterates his conviction that everybody is wrong in defining accommodation paper as paper without consideration. Having shown in the answer that not only all the cases, all the text-writers, and all the encylopedias, the law dictionaries, and the ordinary English lexicons, are against him, and all give the same definition as the Negotiable Instruments Act, his only reply is that "the conference erred in good company." It is the Dean against the world. Therefore so much the worse for the world. This eccentric heresy of the Professor makes his illustrations referring to accommodation parties utterly meaningless. The contestants are not using the same yardstick.

The original criticism on section 34 was "that it nowhere stated that an indorsement is an order, and nowhere defined the difference between a guaranty and an indorsement." Our answer was that it was for the court rather than for a code on negotiability to settle questions outside of negotiable instruments. The new criticism is that "it is unfortunate that an excellent opportunity to unify the law was neglected." Yet in his first note the Professor prides himself on the fact that the adoption of his proposed amendments would shorten the act by something more than a dozen lines. One ventures to say that if this "excellent opportunity to unify

[1] For the fair interpretation of section 22 see the new edition of Norton's Hornbook, 220, and note 15 therewith.

the law" by laying down the law of assignments and guaranty were embraced, and the omissions which the Dean recommends at the end of his first article were also added, the Negotiable Instruments Law would have contained fifty instead of thirty-six pages.

Section 37 is an exact copy of the English Act. The fact that no trouble has arisen under it in England sufficiently indicates that the immunity the Dean claims for the solvent indorser "A" does not exist. Equity would take care of that.

Section 64. Anomalous Indorsers. One must answer the algebraic illustration of the supposed misapprehension of the present writer on the Dean's first criticism by giving a Roland for an Oliver. For the lamentable fact is that the Dean seems to have misapprehended the answer already given and the reasons stated why his first proposed substitute would defeat the purpose of the act. In the careful examination of this section by Mr. Tiffany,[1] the editor says, after referring to the previous "chaos of conflicting authorities," and speaking of the rule laid down in the Negotiable Instruments Law, as "an important step toward uniformity on this subject," "that it has the further advantage that it abolishes so-called 'presumptions,' lays down definite rules of liability; and that it probably gives expression as nearly as possible to the actual intentions of the parties in such cases." As the Dean's definition of accommodation paper includes paper for value received, his new illustration has no meaning, if the illustration makes "B" an accommodation indorser.

65–4. The Dean claims the doctrine quoted in the answer from his Leading Cases, that an indorsee without recourse is liable to subsequent holders on his warranty of genuineness, was "a youthful indiscretion" committed in his "callow days," and adds that neither now nor then did he ever entertain the heresy that there was any difference between the obligation of a qualified indorser and that of a transferrer by delivery. In addition to former quotations from Daniel and Norton on this subject we beg to refer him to the following quotation from the very able article on Bills and Notes in the 4th American and English Encyclopedia of Law, 2d edition, page 281:—

"Indorsement considered as a transfer of title. (1.) Generally. The liabilities of an indorser as a vendor or transferrer of the instrument are identical with those of a transferrer by delivery, with this exception, that while a transferrer by delivery is liable only to his immediate transferee,

[1] Norton's Hornbook, pages 138–143.

an indorser, being a party to the instrument, is liable to all subsequent bona-fide holders." [1]

As both this article and the code were published simultaneously, neither could have borrowed from the other. The critic has no need to blush for a "youthful indiscretion" adopted by four of the best American authorities.[2]

Sections 70 and 119–4 add nothing to what have already been discussed. Reiteration does not advance the argument.

Section 120–3 declares that a person secondarily liable on the instrument is discharged by the discharge of a prior party. The critic's arbitrary reply to the answer in regard to this section almost eclipses his remarks on section 29. It had been said in answer to the Dean's strictures on section 120–3 that the context clearly showed that his rendering was a misinterpretation of the meaning of that section, that none of the learned authors who have discussed the Negotiable Instruments Act since it was enacted interpreted it as he did, that the commissioners from thirty-two states whose special duty it was, in reporting the Negotiable Instruments Law for adoption, to mention every change, never suggested any change from the existing law in that section, that it was the language generally given in the text-books,[3] and that the ordinary rule of construction of codes reaffirming the common law was never to assume any change unless imperatively demanded by the language used. The only reply to all these points made in the answer is that the Dean entertains a different opinion. Why he should do so he does not inform us, except by reference to the Vagliano case.

To be sure the Vagliano case refused to add the words "to the

[1] To the same effect is Tiedeman, section 244, note 5; Norton, 167.

[2] It may be pardonable to repeat here a note on this section from our answer in the Yale Law Journal, January number, page 93, although that note is perhaps more pertinent to some other sections in which the Norton Hornbook is freely quoted:—

"On this point I have cited chiefly the new Norton Hornbook, on Bills and Notes, just edited by Mr. Francis B. Tiffany, not only because it is one of the ablest and most interesting discussions on this special point, but because the editor seems to have taken most of the new matter in the book equally from the Negotiable Instruments Law and Professor Ames's Leading Cases on Bills and Notes. The preface says: 'The present editor wishes to express his great obligation to Professor Ames, whose Index and Summary at the end of the cases, unquestionably the most important contribution to the subject that has been made in America, he has constantly consulted.' It is, hence, doubly reassuring to note that with so orthodox an authority for 'constant' reference, as the Leading Cases on Bills and Notes, Mr. Tiffany quotes a score of definitions, bodily, from the Negotiable Instruments Law, and so far as I have observed does not seem to disagree with its statement of law on any point."

[3] Norton, 260 and 308.

knowledge of the acceptor" to the section of the English Act relating to fictitious payees; but why? Because, as the court says in the case of Shipman *et al. v.* Bank of the State of New York,[1] it is apparent the code "intended to make the change and did make the change," but with such extreme reluctance and dissent as to strengthen rather than weaken the doctrine we had cited in Sutherland and Endlich, that in codes restating the common law, "no change is presumed except by the clearest and most imperative implication." In point of fact the Dean practically seeks to read into this sub-section (120–3) the words "by operation of law."

The Dean further claims this paragraph, when interpreted as everybody else interprets it, as meaning "a discharge by the holder," could apply to "no possible case." Then what "possible" harm could it do, except in releasing that extraordinary accommodation indorser, always in reserve, who haply indorsed it "for value received?"

Section 186. But the most truly academical criticism in the whole list is the objection to section 186. The section reads thus: —

> "A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay."

Copied from the English Act, repeated in the text-books since the first edition of Byles on Bills, with no reported case to the contrary, this section, at least, would seem to be solid. But, no! In section 89, treating of notice of dishonor generally, the Dean detects a hidden danger, and insists that under the combined operation of the two sections, the drawer of a check would escape liability if no notice of dishonor were given. To be sure, section 89 also is in the English Act and in all the text-books, but what of that? Section 186, the critic says, taken with section 89, establishes a rule "opposed alike to justice and to well established law." How or why the joint effect of the same two statements of law should be one thing at the common law or the law merchant and totally and mischievously different when put in a code, does not appear. If what the Dean means is that section 186 is orthodox enough, but that section 89 is not sufficiently guarded by its own expression and by sections 70, 114, 185, and other kindred sections (as I believe it is), that raises another very different question not heretofore discussed. Although both the English and American

[1] 126 N. Y. 318, 335.

acts define checks to be bills of exchange for the sake of convenience, in point of fact this is not strictly true.[1] And the courts, doubtless, in construing the Negotiable Instruments Act, would recognize the distinction between the two, and construe section 89 accordingly, with reference to the ordinary law on demand paper and checks, and practically hold the drawer primarily liable, as he is, in fact, the principal debtor. But however that may be, instead of section 186 aiding the supposed unjust effect of section 89, in discharging the drawer of a check if notice of non-payment is not given, its effect is exactly contrary to that.

For, since the only penalty for delay in presentment (186) is the loss occasioned by delay, and *not* a discharge, the natural inference therefrom would be that the same exceptional exemption as to checks would continue in case of non-payment, namely, that the only penalty would be the loss occasioned by the delay, and *not* any absolute discharge, as claimed by the Dean. It is sufficient here to add, in regard to both sections 186 and 89, that they have been fairly tried and worked well together.

Considering the enormous business in checks every day, the fact that in twenty years' experience in England and four years in four states in the Union, no impecunious drawer of checks has ever been crafty enough to claim a discharge of his obligation in this ingenious way would seem of itself to refute the strained construction of the Dean. But if a right of action was lost on the check by the effect of the combined sections, the drawer would be liable on the original debt.[2]

Lyman Denison Brewster.

APPENDIX.

LETTER OF MR. ARTHUR COHEN, Q. C., ON THE NEGOTIABLE INSTRUMENTS LAW.[3]

5 PAPER BUILDINGS, TEMPLE, LONDON,
March 11, 1901.

DEAR SIR, — The following are some observations which occur to me in reference to some of Professor Ames's very ingenious and able criticisms of the Negotiable Instruments Act in the HARVARD LAW REVIEW.

[1] See 5th Am. & Eng. Enc. of Law, page 1030 and note 2; Norton, page 408, sec. 151.

[2] 2 Randolph, 1554; 2 Daniel, sec. 1120; Van Schaack on Checks, 164, who says "the holder is agent of the drawer," and on page 25 "the drawer is the principal debtor;" Tiffany's Norton, 418, which cites on this point, among many other cases, Bull v. Bank, 123 U. S. 105.

[3] This letter was received after the above article went to press.

First, Section 3 provides that an order or a promise is not rendered conditional by the addition of a statement of the transaction which gives rise to the instrument. These words were inserted in the English Act in order to provide for cases where the bill or note contains an order or a promise to pay a certain sum "being a portion of a value or order (*sic*) deposited in security for the payment hereof," or "on account of money advanced for a certain person," and similar cases in which the transaction on account of which the bill or note is given is referred to. Such cases presented themselves in 7 T. R. 733, L. R. 3 Q. B. 753, and other reported decisions. The words in the English Act correctly state what the English law is, and I see nothing obscure, inartistic, or useless in them, nor do I think that any intelligent judge could be misled by them.

As regards section 36–2–3, I do not think that the words used could possibly mislead or present the slightest difficulty to any intelligent person, and as it is by no means easy to determine in what cases an agent is or is not a trustee in the proper sense of the word, I am of opinion that the section ought not to be altered.

Section 9–3 declares "an instrument to be payable to bearer when it is payable to the order of a fictitious or non-existing person, *and such fact was known to the person making it so payable."* The section is substantially the same as the corresponding one in the English Act with the exception of the words between asterisks. In Vagliano *v.* Bank of England, 23 Q. B. D. 260, Lord Justice Bowen says: —

"The exception that bills drawn to the order of a fictitious or non-existing person might be treated as payable to bearer was based upon the law of estoppel, and applied only against the parties who at the time they became liable on the bill were cognizant of the fictitious character or non-existence of the supposed payee."

The English Act has modified and simplified the law, but the Negotiable Instruments Act has not gone so far as the English Act. I do not think that the section in question will work any injustice, or that there is any sufficient ground for altering it.

Section 9–5. This section is substantially the same as 3 of the English Act. We altered the English law as it stood before the passage of the act. This was deliberately done on the strong recommendation of the bankers and merchants who were members of the committee, and I have reason to believe that the alteration of the law has been generally approved of in the United Kingdom, and there does not seem to have been any opposition to it manifested in the United States.

Section 20. This section certainly alters the law as it exists in England, but I think it very likely that the alteration is an improvement. The wisdom of the rule laid down in Cohen *v.* Wright has often been doubted. Professor Ames takes one case, that of the supposed principal being a bankrupt. Even in that case it would be doubtful what could be re-

covered until the dividend was declared and the bankruptcy concluded; and in the case of the principal not being bankrupt, but being a man in bad credit, the question would have to be left to a jury what amount could properly be recovered from the principal. It may well be held that in actions on negotiable instruments, against a person who professedly acts on behalf of another person, A, it would be inconvenient to allow the former to allege an attempt to prove that probably the whole amount could not be recovered from A. I think the 20th section should be retained, and may be considered as a practical improvement of the law, unless there be reason to suppose that merchants and bankers think it unjust. I agree with Mr. Brewster that much indulgence should not be shown in business to a person who professes to have authority when he is really acting without authority.

As regards section 22, it expresses what Mr. Justice Mellor stated as reported in the 8th of Best & Smith, page 833. I think the section objected to is equivalent to the corresponding section of the English Act. The infant cannot be sued, but he can transfer the instrument so as to enable a holder to sue other persons. Professor Ames seems to think it unjust that persons should be able to *retain the negotiable instrument* against the infant. I do not see the injustice of this if the infant himself cannot be sued on the instrument. Again, I do not think any intelligent judge could be misled by the wording of this section.

Section 29. This is the same as the 28th section of the English Act, which has given rise to no doubt or difficulty. "Without receiving any value therefor" means without receiving any value for the bill, and not *without receiving any consideration for lending his name.*

Section 68. This section does alter the law, at any rate as it exists in this country. To me it seems very doubtful whether it is not an improvement by reason of its sweeping away certain technicalities. There has always been a tendency in the law merchant to consider contracts which are in form joint contracts as being intended to be joint and several.

Section 137. I am of opinion with Professor Ames that this section is imperfect. It would seem to imply that if the bill be destroyed or not returned accepted within a reasonable time, notice of dishonor need not be given to the drawer. This is not in my opinion the law, and ought not to be law.

I do not think the act is imperfect because it does not contain rules relating to the conflict of laws, any more than it could be considered imperfect because it does not contain rules defining illegality or fraud. The sections in the English Act relating to the conflict of laws were introduced in order to embody the result of certain recent English decisions. I do not know whether the American decisions relating to these questions are sufficiently uniform to render it desirable to embody these results in a code relating to negotiable instruments.

On the whole, I consider the Negotiable Instruments Act a very important and ably framed code. Its style and language seem to me in some respects better than those of the English Act, as being simpler, less technical, and more easily intelligible. I have no doubt it is not perfect. What code is perfect? Whether the very few blemishes which may have been discovered are such as ought to induce states which have not yet adopted the act to require it to be amended, in a few respects, is a question of expediency and public or state policy on which I do not venture to express an opinion.

I am very sorry I have not had time to write more or to put my observations into a better shape.

We are, you may be interested to know, engaged in codifying the law of insurance, and I think the bill will be found to be a useful measure.

Believe me, yours very sincerely,

ARTHUR COHEN.